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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/916,653	07/30/2001	Stephen R. Palm	1875.0080001	8494
26111	7590	08/08/2006	EXAMINER	
STERNE, KESSLER, GOLDSTEIN & FOX PLLC 1100 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			TSE, YOUNG TOI	
			ART UNIT	PAPER NUMBER
			2611	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/916,653

Applicant(s)

PALM, STEPHEN R.

Examiner

YOUNG T. TSE

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33, 39, 42-46, 52, 55 and 56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 6, 16, 18, 19, 29, 31, 32, 42, 44, 45 and 55 is/are rejected.
- 7) ☒ Claim(s) 4, 7-15, 17, 20-28, 30, 33, 39, 43, 46, 52 and 56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claims 31-33, 39, and 42-43 are objected to because of the following informalities: in claim 31, line 10, "being in" should be "being within". The dependent claims 32-33, 39 and 42-43 are objected to because they are depended upon the independent claim 31. Appropriate correction is required.

Allowable Subject Matter

2. The indicated allowability of claims 1-33, 39, 42-46, 52 and 55-56 is withdrawn in view of the newly discovered reference(s) to Miller. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-3, 5-6, 16, 18-19, 29, 31-32, 42, 44-45 and 55 are rejected under 35 U.S.C. 102(e) as being anticipated by Miller (US 6,418,160 B1).

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Miller discloses a method and apparatus for evaluating the characteristics of a subscriber loop associated with a customer modem and a central modem.

With respect to claims 1, 5, 18, 31 and 44, Miller discloses a system in Figure 1 for handshaking modems over a communications network, wherein the system comprises a central modem (22) configured to generate a modified capability indicator from a standard capability indicator, said modified capability indicator being used to indicate that the central modem is able to select a direction of transmission over one or more frequency bands (figure 2 and col. 3, lines 41-52) available for use by the central modem and one or more remote modems (12) able to recognize the modified capability indicator and in response, transmit a response signal over a carrier frequency selected from one of the one or more frequency bands available for use by the central modem.

With respect to claims 2, 6, 19, 32 and 45, although Miller does not describe the frequency range used by the central modem, it is well known in the modem communication art that the upper carrier frequency is allocated from the frequency band 25 kHz to 138 kHz by the central modem which are standard frequency bands.

With respect to claims 3, 16, 29, 42 and 55, although Miller does not show the detail of the modems, it is well known to a person skill in the art would recognize that an amplitude modulator could be implemented in Miller's central modem for amplitude modulating a standard capability indicator to produce a modified capability indicator.

Allowable Subject Matter

5. Claims 4, 7-15, 17, 20-28, 30, 46, 52 and 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

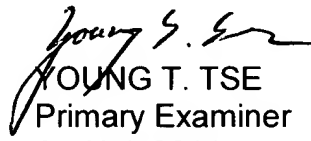
6. Claims 33, 39 and 43 would be allowable if rewritten to overcome the objection(s) set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOUNG T. TSE whose telephone number is (571) 272-3051. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jay Patel can be reached on (571) 272-2988. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


YOUNG T. TSE
Primary Examiner
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